IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2432 OF 2005

Miramar Coop. Housing Society Ltd. ... Petitioner
Versus.
The Municipal Corporation of
Greater Mumbai and others. ... Respondents.

Shri N.V.Gangal i/by Shri S.M.Shettigar for the
Petitioner.
Ms.Aruna Sawla for Respondents Nos.1 to 4.
Shri Snehal K.Shah with Shri Ramchandran i/by
M/s.Narayanan & Narayanan for Respondents 6 & 7.

CORAM : H.L.GOKHALE, &
ABHAY S. OKA, JJ.

DATED : 30th JANUARY, 2006.

P.C.:

1. Heard Shri Gangal in support of this petition.

Shri Shah appears for the contesting Respondents i.e. Respondents Nos.6 and 7 and Ms.Savala appears for Respondents Nos.1 to 4.

2. The petition makes a grievance about disputed construction which Respondents Nos.6 and 7 have put up on the terrace of the building owned by the Petitioner-Society. The prayer in the petition is against the Municipal Corporation seeking a direction that it be directed to remove the unauthorised construction on the terrace above flat No.B-10 by Respondents Nos.6 and 7. Shri Shah appearing for Respondents Nos.6 and 7 has stated that whatever structure was existing above the concerned flat has been removed way back in June 2002 and there no such structure existing as of today now. In any case he is agreeable if there is any such structure existing the

Municipal Corporation is free to remove the same. The Municipal authorities are directed to remove if any unauthorised structure exists. The Corporation will take necessary steps expeditiously and preferably by end of April 2006.

3. Shri Shah however states that a portion of the terrace admeasuring 206 sq.ft. is part of the flat of Respondents Nos.6 and 7 and they are entitled to put up a barricade to demarcate this particular portion from the other part of the terrace. Shri Gangal disputes that any such right is available to Respondents Nos.6 and 7 which they claim on the basis of their agreement of purchase of the concerned flat from the developer of the property. As far as this aspect is concerned, it will be open to the Petitioner-society to take appropriate steps under section 91 of the Maharashtra Cooperative Societies Act. Shri Shah states that the barricade as stated by him very much exists and he wants the same to be retained. The Corporation will not remove the barricade until the rights of the parties are decided by the Cooperative Court.

4. The petition stands disposed of in the above terms.

(H.L.Gokhale, J.)

(Abhay S.Oka, J.)